

Goodling, Monica

From: Oprison, Christopher G. [Christopher_G._Oprison@who.eop.gov]
Sent: Wednesday, February 14, 2007 6:02 PM
To: Sampson, Kyle; Goodling, Monica
Subject: FW: question

Kyle, Monica

See below from Pete Wehner in Strategic Initiatives. Has DOJ drafted talking points? If not, and if you think it advisable to respond, I would suggest sending along the DAG's Senate Judiciary testimony from last week. Or, alternatively, we could provide no response. Your thoughts?

From: Wehner, Peter H.
Sent: Wednesday, February 14, 2007 5:42 PM
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Subject: question

Chris:

Would you/somebody at DOJ be able to send along to me a response to the charges by Joe Conason, which I could pass along to Mark McKinnon?

I'd be grateful if you could -- and I'd understand if you can't.

Many thanks.

Pete

From: Mark McKinnon [mailto:mmckinnon@pstrategies.com]
Sent: Monday, February 12, 2007 8:48 PM
To: Wehner, Peter H.
Subject: Conason

Pete.

I don't think Joe Conason is generally worth responding to, but do we have something off the shelf on this....?

Thanks,
mck

Alberto Gonzalez's coup d'etat

The Constitution be damned, the attorney general has seized control of U.S. attorney appointments for partisan purposes.

By Joe Conason

Feb. 09, 2007 | Under any circumstances, the Bush

http://dir.salon.com/topics/george_w_bush/ administration's sudden, explicitly political dismissal and replacement of United States attorneys in judicial districts across the country would be very troubling -- both as a violation of American law enforcement traditions and as a triumph of patronage over competence.

But as the story behind these strange decisions unfolds, a familiar theme is emerging. Again, the White House and the Justice Department have been exposed in a secretive attempt to expand executive power for partisan purposes. And again, their scheming is tainted with a nasty whiff of authoritarianism.

There is much more at stake here than a handful of federal jobs.

Leading senators of both parties are disturbed by these incidents because U.S. attorneys -- the powerful officials appointed by the president to prosecute federal crimes and defend federal interests in each of the nation's judicial districts -- are supposed to be as nonpartisan as possible. Democrats mostly appoint Democrats and Republicans mostly appoint Republicans, but the U.S. attorneys are usually chosen with the advice and consent of the senators from their home states, and then confirmed by the full Senate, with a decent respect for skill and experience as well as political connections.

The reason for this appointment process was simple: These prosecutors must police the politicians. They are expected to guard the nation's judicial system against the varieties of political abuse that are typical of authoritarian systems. They are granted a substantial degree of independence from the government in Washington, including the attorney general who functions as their boss.

To ensure that no U.S. attorney could be fired on a whim and replaced with a malleable hack, the relevant statute required that whenever a vacancy occurred in midterm, the replacement would be appointed by federal circuit judges rather than by the president. Getting rid of irksomely honest and nonpartisan prosecutors was difficult if not impossible.

But that wholesome safeguard was breached in December 2005, when the Senate renewed the Patriot Act. At the behest of the Justice Department, an aide to Sen. Arlen Specter slipped a provision into the bill <http://www.tpmuckraker.com/archives/002354.php> that permitted the White House to place its own appointees in vacant U.S. attorney positions permanently and without Senate confirmation. So silently was this sleight of hand performed that Specter himself now claims, many months later, to have been completely unaware of the amendment's passage. (Of course, it would be nice if the senators actually read the legislation before they voted, particularly when they claim to be the authors.)

The staffer who reportedly performed this bit of dirty work

<http://www.tpmuckraker.com/archives/002489.php> is Michael O'Neill, a law professor at George Mason University and former clerk for Supreme Court Justice Clarence Thomas. As the Washington Times explained

<http://www.washingtontimes.com/national/20050905-114119-3586r.htm> when O'Neill was appointed as the Senate Judiciary Committee's chief counsel, many observers believed that Specter had hired him to reassure conservatives of his loyalty to the Bush White House. Right-wing distrust had almost ousted the Pennsylvania moderate from the Judiciary chairmanship, and appointing O'Neill was apparently the price for keeping that post.

Evidently O'Neill rewarded Specter by sneaking through legislation to deprive him and his fellow senators of one of their most important powers, at the behest of an attorney general intent on aggrandizing executive power. The results of this backstage betrayal -- now playing out in a wave of politicized dismissals and hirings -- were perfectly predictable and utterly poisonous.

Carol Lam, the U.S. attorney in San Diego who successfully prosecuted the sensationally crooked Republican Rep. Randy "Duke" Cunningham,

<http://www.signonsandiego.com/news/politics/20070121-9999-1n21lam.html> was fired for no known reason while she is still pursuing important leads in that historic case. Cunningham is supposed to be cooperating, but if Bush replaces her with a partisan stooge, he may be able to keep his secrets. Bud Cummings, the respected U.S. attorney in Little Rock, Ark., was canned to make room for a Republican opposition research operative

<http://www.warandpiece.com/blogdirs/005470.html> and Karl Rove acolyte named Timothy Griffin. Could that conceivably have anything to do with Sen. Hillary Rodham Clinton http://dir.salon.com/topics/hillary_rodham_clinton/'s presidential candidacy? Paul Charlton, the U.S. attorney in Arizona, was thrown out

http://www.aei.org/publications/filter.all,pubID.25497/pub_detail.asp while investigating allegations of corruption against Republican Rep. Rick Renzi.

And John McKay, the U.S. attorney in Seattle whose diligence has been praised by judges and lawyers of both parties, was simply ordered to quit

<http://www.theolympian.com/377/story/64410.html> last December, for no obvious reason. Although McKay's last evaluation by the Justice Department was excellent, the attorney general insists that all of these curious firings were due to "performance" issues.

Any such self-serving statements emanating from Alberto Gonzales

http://dir.salon.com/topics/alberto_gonzales/ should always be greeted with appropriate skepticism. So should the claim that he sought to seize control of interim U.S. attorney appointments because of his concern over the "separation of powers" issues supposedly inherent in judges' appointing prosecutors. As the McClatchy Newspapers reported on Jan. 26, Gonzales has named at least nine "conservative loyalists from the Bush administration's inner circle" <http://www.realcities.com/mld/krwashington/16555903.htm> to positions vacated by professional prosecutors.

On Thursday, the Senate Judiciary Committee voted to restore the old nonpartisan system <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020800907.html> for replacing U.S. attorneys and to require Senate confirmation of all new appointees. The full Senate <http://dir.salon.com/topics/senate/> and the House of Representatives http://dir.salon.com/topics/house_of_representatives/ should do likewise, despite Republican opposition, but that is not enough. The Senate Democrats should continue to probe the attorney general's little coup d'état and all of the resulting appointments. That is the best way to discourage future usurpations -- and to frustrate whatever skulduggery was afoot this time.

-- By Joe Conason

Goodling, Monica

From: Goodling, Monica
Sent: Wednesday, February 14, 2007 7:09 PM
To: 'Oprison, Christopher G.'; Sampson, Kyle
Subject: RE: question

Attachments: FACT SHEET - USA appointments.pdf; TPS - US Attorney vacancy-appointment points.pdf; USA prosecution only stats.pdf; Examples of Difficult Transition Situations.pdf; 02-06-07 McNulty Transcript re US Attorneys.doc



FACT SHEET - USA appointments.... TPS - US Attorney vacancy-appe... USA prosecution only stats.pdf... Examples of Difficult Transiti... 02-06-07 McNulty Transcript re...

Chris – The relevant talkers and statistics are contained in the attached documents. Please let me know if you need anything else. (We do not have a canned editorial response).

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
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Pete

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 14 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 5 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed); and
- **Southern District of Georgia** – FAUSA Edmund A. Booth, Jr. is acting USA.

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 14 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

Examples of Difficult Transition Situations

Examples of Districts Where Judges Did Not Exercise Their Court Appointment (Making the Attorney General's Appointment Authority Essential To Keep the Position Filled until a Nominee Is Confirmed)

1. **Southern District of Florida:** In 2005, a vacancy occurred in the SDFL. The Attorney General appointed Assistant Attorney General of the Civil Rights Division, Alex Acosta, for 120 days. At the end of the term, the Court indicated that they had (years earlier) appointed an individual who later became controversial. As a result, the Court indicated that they would not make an appointment unless the Department turned over its internal employee files and FBI background reports, so that the court could review potential candidates' backgrounds. Because those materials are protected under federal law, the Department declined the request. The court then indicated it would not use its authority at all, and that the Attorney General should make multiple, successive appointments. While the selection, nomination, and confirmation of a new U.S. Attorney was underway, the Attorney General made three 120-day appointments of Mr. Acosta. Ultimately, he was selected, nominated, and confirmed to the position.
2. **Eastern District of Oklahoma:** In 2000-2001, a vacancy occurred in the EDOK. The court refused to exercise the court's authority to make appointments. As a result, the Attorney General appointed Shelly Sperling to three 120-day appointments before Sperling was nominated and confirmed by the Senate (he was appointed by the Attorney General to a fourth 120-day term while the nomination was pending).
3. **In the Western District of Virginia:** In 2001, a vacancy occurred in the WDVA. The court declined to exercise its authority to make an appointment. As a result, the Attorney General made two successive 120-day appointments (two different individuals).

This problem is not new ...

4. **The District of Massachusetts.** In 1987, the Attorney General had appointed an interim U.S. Attorney while a nomination was pending before the Senate. The 120-day period expired before the nomination had been reviewed and the court declined to exercise its authority. The Attorney General then made another 120-day appointment. The legitimacy of the second appointment was questioned and was reviewed the U.S. District Court for the District of Massachusetts. The Judge upheld the validity of the second 120-day appointment where the court had declined to make an appointment. See 671 F. Supp. 5 (D. Ma. 1987).

Examples Where Judges Discussed Appointing or Attempted to Appoint Unacceptable Candidates:

1. Southern District of West Virginia: When a U.S. Attorney in the Southern District of West Virginia, David Faber, was confirmed to be a federal judge in 1987, the district went through a series of temporary appointments. Following the Attorney General's 120-day appointment of an individual named Michael Carey, the court appointed another individual as the U.S. Attorney. The court's appointee was not a DOJ-employee at the time and had not been subject of any background investigation. The court's appointee came into the office and started making inquiries into ongoing public integrity investigations, including investigations into Charleston Mayor Michael Roark and the Governor Arch Moore, both of whom were later tried and convicted of various federal charges. The First Assistant United States Attorney, knowing that the Department did not have the benefit of having a background examination on the appointee, believed that her inquiries into these sensitive cases were inappropriate and reported them to the Executive Office for United States Attorneys in Washington, D.C. The Department directed that the office remove the investigative files involving the Governor from the office for safeguarding. The Department further directed that the court's appointee be recused from certain criminal matters until a background examination was completed. During that time, the Reagan Administration sped up Michael Carey's nomination. Carey was confirmed and the court's appointee was replaced within two-three weeks of her original appointment.

2. South Dakota:

In 2005, a vacancy arose in South Dakota. The First Assistant United States Attorney (FAUSA) was elevated to serve as acting United States Attorney under the Vacancies Reform Act (VRA) for 210 days. As that appointment neared an end without a nomination having yet been made, the Attorney General made an interim appointment of the FAUSA for a 120-day term. The Administration continued to work to identify a nominee; however, it eventually became clear that there would not be a nomination and confirmation prior to the expiration of the 120-day appointment.

Near the expiration of the 120-day term, the Department contacted the court and requested that the FAUSA be allowed to serve under a court appointment. However, the court was not willing to re-appoint her. The Department proposed a solution to protect the court from appointing someone about whom they had reservations, which was for the court to refrain from making any appointment (as other district courts have sometimes done), which would allow the Attorney General to give the FAUSA a second successive, 120-day appointment.

The Chief Judge instead indicated that he was thinking about appointing a non-DOJ employee, someone without federal prosecution experience, who had not been the subject of a thorough background investigation and did not have the

necessary security clearances. The Department strongly indicated that it did not believe this was an appropriate individual to lead the office.

The Department then notified the court that the Attorney General intended to ask the FAUSA to resign her 120-day appointment early (without the expiration of the 120-day appointment, the Department did not believe the court's appointment authority was operational). The Department notified the court that since the Attorney General's authority was still in force, he would make a new appointment of another experienced career prosecutor. The Department believed that the Chief Judge indicated his support of this course of action and implemented this plan.

The FAUSA resigned her position as interim U.S. Attorney and the Attorney General appointed the new interim U.S. Attorney (Steve Mullins). A federal judge executed the oath and copies of the Attorney General's order and the press release were sent to the court for their information. There was no response for over 10 days, when a fax arrived stating that the court had also attempted to appoint the non-DOJ individual as the U.S. Attorney.

This created a situation where two individuals had seemingly been appointed by two different authorities. Defense attorneys indicated their intention to challenge ongoing investigations and cases. The Department attempted to negotiate a resolution to this very difficult situation, but was unsuccessful. Litigating the situation would have taken months, during which many of the criminal cases and investigations that were underway would have been thrown into confusion and litigation themselves.

Needing to resolve the matter for the sake of the ongoing criminal prosecutions and litigation, after it was clear that negotiations would resolve the matter, the White House Counsel notified the court's purported appointee that even if his court order was valid and effective, then the President was removing him from that office pursuant to Article II of the Constitution and 28 U.S.C. § 541(c). Shortly thereafter, Mr. Mullins resigned his Attorney General appointment and was recess appointed by President Bush to serve as the U.S. Attorney for the District of South Dakota. The Department continued to work with the home-state Senators and identified and nominated a new U.S. Attorney candidate, who was confirmed by the Senate in the summer of 2006.

- 3. Northern District of California:** In 1998, a vacancy resulted in NDCA, a district suffering from numerous challenges. The district court shared the Department's concerns about the state of the office and discussed the possibility of appointing of a non-DOJ employee to take over. The Department found the potential appointment of a non-DOJ employee unacceptable. A confrontation was avoided by the Attorney General's appointment of an experienced prosecutor from Washington, D.C. (Robert Mueller), which occurred with the court's concurrence. Mueller served under an AG appointment for 120 days, after which the district court gave him a court appointment. Eight months later, President Clinton nominated Mueller to fill the position for the rest of his term.

TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
 - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

U.S. Attorneys Serve at the Pleasure of the President:

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

The Administration Is Nominating Candidates for U.S. Attorney Positions:

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 14 vacancies have been created. Of those 14 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for 2 positions – all in consultation with home-state Senators.

The 14 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:

- In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 7 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on

the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:
 - 1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
 - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
 - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.

- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.

- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

UNITED STATES ATTORNEYS' PROSECUTION STATISTICS

This Administration Has Demonstrated that It Values Prosecution Experience. Of the 124 Individuals President George W. Bush Has Nominated Who Have Been Confirmed by the Senate:

- 98 had prior experience as prosecutors (79 %)
 - 71 had prior experience as federal prosecutors (57 %)
 - 54 had prior experience as state or local prosecutors (44%)
- 104 had prior experience as prosecutors or government litigators on the civil side (84 %)

In Comparison, of President Clinton's 122 Nominees Who Were Confirmed by the Senate:

- 84 had prior experience as prosecutors (69 %)
 - 56 had prior experience as federal prosecutors (46 %)
 - 40 had prior experience as state or local prosecutors (33 %)
- 87 had prior experience as prosecutors or government litigators on the civil side (71 %)

Since the Attorney General's Appointment Authority Was Amended on March 9, 2006, the Backgrounds of Our Nominees Has Not Changed. Of the 15 Nominees Since that Time:

- 13 of the 15 had prior experience as prosecutors (87%) – *a higher percentage than before.*
 - 11 of the 15 had prior experience as federal prosecutors (73%) – *a higher percentage than before the change*; 10 were career AUSAs or former career AUSAs and 1 had federal prosecution experience as an Assistant Attorney General of the Civil Rights Division
 - 4 of the 15 nominees had experience as state or local prosecutors (27%)

Those Chosen To Be Acting/Interim U.S. Attorneys since the Attorney General's Appointment Authority Was Amended on March 9, 2006, Have Continued To Be Highly Qualified. Of the 14 districts in which vacancies have occurred, 15 acting and/or interim appointments have been made:

- 14 of the 15 had prior experience as federal prosecutors (93%)

Goodling, Monica

From: Goodling, Monica
Sent: Thursday, February 15, 2007 2:25 PM
To: 'Oprison, Christopher G.'
Subject: RE: question

It is info we have given to friendlies on the Hill. It can all go.

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Thursday, February 15, 2007 2:04 PM
To: Goodling, Monica
Subject: RE: question

Monica, other than the McNulty testimony, is any of this material public and can it be disseminated to Mark McKinnon?

From: Goodling, Monica [mailto:Monica.Goodling@usdoj.gov]
Sent: Wednesday, February 14, 2007 7:09 PM
To: Oprison, Christopher G.; Sampson, Kyle
Subject: RE: question

Chris -- The relevant talkers and statistics are contained in the attached documents. Please let me know if you need anything else. (We do not have a canned editorial response).

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Wednesday, February 14, 2007 6:02 PM
To: Sampson, Kyle; Goodling, Monica
Subject: FW: question

Kyle, Monica

See below from Pete Wehner in Strategic Initiatives. Has DOJ drafted talking points? If not, and if you think it advisable to respond, I would suggest sending along the DAG's Senate Judiciary testimony from last week. Or, alternatively, we could provide no response. Your thoughts?

From: Wehner, Peter H.
Sent: Wednesday, February 14, 2007 5:42 PM
To: Oprison, Christopher G.
Subject: question

Chris:

Would you/somebody at DOJ be able to send along to me a response to the charges by Joe Conason, which I could pass along to Mark McKinnon?

I'd be grateful if you could -- and I'd understand if you can't.

Many thanks.

Pete

From: Mark McKinnon [mailto:mmckinnon@pstrategies.com]
Sent: Monday, February 12, 2007 8:48 PM
To: Wehner, Peter H.
Subject: Conason

Pete.

I don't think Joe Conason is generally worth responding to, but do we have something off the shelf on this....?

Thanks,
mck

Alberto Gonzalez's coup d'etat

The Constitution be damned, the attorney general has seized control of U.S. attorney appointments for partisan purposes.

By Joe Conason

Feb. 09, 2007 | Under any circumstances, the Bush http://dir.salon.com/topics/george_w_bush/ administration's sudden, explicitly political dismissal and replacement of United States attorneys in judicial districts across the country would be very troubling -- both as a violation of American law enforcement traditions and as a triumph of patronage over competence.

But as the story behind these strange decisions unfolds, a familiar theme is emerging. Again, the White House and the Justice Department have been exposed in a secretive attempt to expand executive power for partisan purposes. And again, their scheming is tainted with a nasty whiff of authoritarianism.

There is much more at stake here than a handful of federal jobs.

Leading senators of both parties are disturbed by these incidents because U.S. attorneys -- the powerful officials appointed by the president to prosecute federal crimes and defend federal interests in each of the nation's judicial districts -- are supposed to be as nonpartisan as possible. Democrats mostly appoint Democrats and Republicans mostly appoint Republicans,

but the U.S. attorneys are usually chosen with the advice and consent of the senators from their home states, and then confirmed by the full Senate, with a decent respect for skill and experience as well as political connections.

The reason for this appointment process was simple: These prosecutors must police the politicians. They are expected to guard the nation's judicial system against the varieties of political abuse that are typical of authoritarian systems. They are granted a substantial degree of independence from the government in Washington, including the attorney general who functions as their boss.

To ensure that no U.S. attorney could be fired on a whim and replaced with a malleable hack, the relevant statute required that whenever a vacancy occurred in midterm, the replacement would be appointed by federal circuit judges rather than by the president. Getting rid of irksomely honest and nonpartisan prosecutors was difficult if not impossible.

But that wholesome safeguard was breached in December 2005, when the Senate renewed the Patriot Act. At the behest of the Justice Department, an aide to Sen. Arlen Specter slipped a provision into the bill <http://www.tpmuckraker.com/archives/002354.php> that permitted the White House to place its own appointees in vacant U.S. attorney positions permanently and without Senate confirmation. So silently was this sleight of hand performed that Specter himself now claims, many months later, to have been completely unaware of the amendment's passage. (Of course, it would be nice if the senators actually read the legislation before they voted, particularly when they claim to be the authors.)

The staffer who reportedly performed this bit of dirty work <http://www.tpmuckraker.com/archives/002489.php> is Michael O'Neill, a law professor at George Mason University and former clerk for Supreme Court Justice Clarence Thomas. As the Washington Times explained <http://www.washingtontimes.com/national/20050905-114119-3586r.htm> when O'Neill was appointed as the Senate Judiciary Committee's chief counsel, many observers believed that Specter had hired him to reassure conservatives of his loyalty to the Bush White House. Right-wing distrust had almost ousted the Pennsylvania moderate from the Judiciary chairmanship, and appointing O'Neill was apparently the price for keeping that post.

Evidently O'Neill rewarded Specter by sneaking through legislation to deprive him and his fellow senators of one of their most important powers, at the behest of an attorney general intent on aggrandizing executive power. The results of this backstage betrayal -- now playing out in a wave of politicized dismissals and hirings -- were perfectly predictable and utterly poisonous.

Carol Lam, the U.S. attorney in San Diego who successfully prosecuted the sensationally crooked Republican Rep. Randy "Duke" Cunningham, <http://www.signonsandiego.com/news/politics/20070121-9999-1n21lam.html> was fired for no known reason while she is still pursuing important leads in that historic case. Cunningham is supposed to be cooperating, but if Bush replaces her with a partisan stooge, he may be able

to keep his secrets. Bud Cummings, the respected U.S. attorney in Little Rock, Ark., was canned to make room for a Republican opposition research operative [<http://www.warandpiece.com/blogdirs/005470.html>](http://www.warandpiece.com/blogdirs/005470.html) and Karl Rove acolyte named Timothy Griffin. Could that conceivably have anything to do with Sen. Hillary Rodham Clinton [<http://dir.salon.com/topics/hillary_rodham_clinton/>](http://dir.salon.com/topics/hillary_rodham_clinton/) 's presidential candidacy? Paul Charlton, the U.S. attorney in Arizona, was thrown out [<http://www.aei.org/publications/filter.all.pubID.25497/pub_detail.asp>](http://www.aei.org/publications/filter.all.pubID.25497/pub_detail.asp) while investigating allegations of corruption against Republican Rep. Rick Renzi.

And John McKay, the U.S. attorney in Seattle whose diligence has been praised by judges and lawyers of both parties, was simply ordered to quit [<http://www.theolympian.com/377/story/64410.html>](http://www.theolympian.com/377/story/64410.html) last December, for no obvious reason. Although McKay's last evaluation by the Justice Department was excellent, the attorney general insists that all of these curious firings were due to "performance" issues.

Any such self-serving statements emanating from Alberto Gonzales [<http://dir.salon.com/topics/alberto_gonzales/>](http://dir.salon.com/topics/alberto_gonzales/) should always be greeted with appropriate skepticism. So should the claim that he sought to seize control of interim U.S. attorney appointments because of his concern over the "separation of powers" issues supposedly inherent in judges' appointing prosecutors. As the McClatchy Newspapers reported on Jan. 26, Gonzales has named at least nine "conservative loyalists from the Bush administration's inner circle" [<http://www.realcities.com/mld/krwashington/16555903.htm>](http://www.realcities.com/mld/krwashington/16555903.htm) to positions vacated by professional prosecutors.

On Thursday, the Senate Judiciary Committee voted to restore the old nonpartisan system [<http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020800907.html>](http://www.washingtonpost.com/wp-dyn/content/article/2007/02/08/AR2007020800907.html) for replacing U.S. attorneys and to require Senate confirmation of all new appointees. The full Senate [<http://dir.salon.com/topics/senate/>](http://dir.salon.com/topics/senate/) and the House of Representatives [<http://dir.salon.com/topics/house_of_representatives/>](http://dir.salon.com/topics/house_of_representatives/) should do likewise, despite Republican opposition, but that is not enough. The Senate Democrats should continue to probe the attorney general's little coup d'état and all of the resulting appointments. That is the best way to discourage future usurpations -- and to frustrate whatever skulduggery was afoot this time.

-- By Joe Conason

Goodling, Monica

From: Oprison, Christopher G. [Christopher_G._Oprison@who.eop.gov]
Sent: Monday, February 26, 2007 9:35 AM
To: Goodling, Monica
Subject: Can you give me a call?

I need to chat about the "performance evaluations" for the departing US Attorneys. Time sensitive issue for Tony. Thanks

Christopher G. Oprison
Associate Counsel to the President
phone: (202) 456-5871
fax: (202) 456-5104

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, February 27, 2007 8:12 AM
To: Sampson, Kyle
Subject: RE: Outgoing US Atty comments

Attachments: image001.jpg; image002.jpg



image001.jpg (18 KB)



image002.jpg (9 KB)

Tomorrow

From: Sampson, Kyle
Sent: Monday, February 26, 2007 6:38 PM
To: Goodling, Monica
Subject: FW: Outgoing US Atty comments

When is Iglesias' last day?

From: Scott Jennings [mailto:SJennings@gwb43.com]
Sent: Monday, February 26, 2007 12:50 PM
To: Sampson, Kyle; coprison@who.eop.gov
Subject: FW: Outgoing US Atty comments

FYI – Iglesias comments in NM. On a political blog out there.

Monday, February 26, 2007

U.S. Attorney Igleisas On His Ouster: It's Not About Performance; It's A "Political Fragging," Plus: An Electric Debate, And: On The Big Bill Beat

Iglesias

<http://bp1.blogger.com/>

n4zMSb0mO2w/ReH3ENkuEXI/AAAAAAAAAis/1IIDXuLSJjk/s1600-h/Iglesias1162w.jpg

Outgoing U.S. Attorney David Iglesias has had enough. He is telling supporters that recent U.S. Senate testimony citing his "job performance" and that of other fired U.S. attorneys as the reason for them getting the axe by the Bush administration is way out of line. In an email to a friend, he dubbed his dismissal "a political fragging" that cannot be pinned on his performance.

"I can provide reams of performance stats showing record immigration, narcotics and firearms prosecutions under my administration, not to mention a higher than national conviction rate. Not to mention the biggest political corruption cases in NM history--four indictments, four convictions.

"This is a political fragging, pure and simple. I'm OK with being asked to move on for political reasons, I'm NOT OK with the Department of Justice wrongfully testifying under oath to the Senate Judiciary Committee that I had performance issues..." So scorched the Gallup native and Santa Fe High graduate.

His reference to a "fragging" is a military term to describe the killing of an unpopular senior officer, typically with a hand grenade. Iglesias served as a Judge Advocate General (JAG) in the United States Naval Reserve and is the military defense attorney portrayed in the early 1990s movie "A Few Good Men."

U.S. ATTORNEY INTRIGUE

The exact reason for the Iglesias departure remains shrouded in mystery. Five of the dismissed U.S. attorneys, including Iglesias, who received walking papers December 7 told reporters that they were not given any reason for their firings and had not been told of any performance problems.

Here in NM, legal and political Alligators pointed to Iglesias's prosecution of ex-Treasurer Vigil in which he managed to get a conviction, but only on one count of <http://www.nmcl.org/> several dozen and only after a mistrial. Others attribute the dismissal to disgruntlement on the part of ABQ GOP Congresswoman Heather Wilson and others that Iglesias did not announce indictments during the '06 campaign regarding the federal corruption probe of the construction of two Bernalillo county courthouses. Indictments are still anticipated in the case which focuses on Democratic politicians,

As for the dismissal of the other U.S. attorneys, several of them were in the midst of investigations focusing on Republican politicians or their supporters. At that heated senate hearing, Justice cited poor performance for the firings, denying it was politics. Here's more from the Sunday New York Times.

Iglesias remains on the job, awaiting a replacement from the Bush White House. NM GOP Senator Pete Domenici has forward several names for consideration, including those of ABQ attorney Charles Peifer and '06 GOP attorney general candidate Jim Bibb. Legal beagles are saying Peifer appears to be a favorite because his legal experience dwarfs that of Bibb who is the son-in-law law of former Dem NM Governor Toney Anaya.

Observers expected an announcement by now, but perhaps the controversy over the outgoing prosecutors has slowed the process. Stay tuned.

Tracking:

Recipient
Sampson, Kyle

Read
Read: 2/27/2007 8:15 AM

Goodling, Monica

From: Roehrkasse, Brian
Sent: Wednesday, February 28, 2007 11:21 AM
To: Goodling, Monica
Subject: RE: NM USATTY - urgent issue

Yes.

-----Original Message-----

From: Goodling, Monica
Sent: Wednesday, February 28, 2007 11:21 AM
To: Roehrkasse, Brian
Subject: Re: NM USATTY - urgent issue

With dag and going into prep for will's briefing on house side. Can you come up for prep and to discuss this?

-----Original Message-----

From: Roehrkasse, Brian
To: Elwood, Courtney; Goodling, Monica; Scolinos, Tasia; Hertling, Richard
CC: Sampson, Kyle
Sent: Wed Feb 28 10:47:31 2007
Subject: RE: NM USATTY - urgent issue

My question is why would members of Congress and a U.S. Attorney be discussing the timing on a criminal indictment? Doesn't it seem odd that he would even acknowledge that?

Monica, can you please call me?

From: Elwood, Courtney
Sent: Wednesday, February 28, 2007 10:34 AM
To: Goodling, Monica; Roehrkasse, Brian; Scolinos, Tasia; Hertling, Richard
Subject: FW: NM USATTY - urgent issue

I have spoken to McNulty, who will reach out to WH Counsel's Office.

Courtney Simmons Elwood
Deputy Chief of Staff and
Counselor to the Attorney General
U.S. Department of Justice
(w) 202.514.2267
(c)
(fax) 202.305.9687

From: Jennings, Jeffery S. [mailto:Jeffery_S._Jennings@who.eop.gov]
Sent: Wednesday, February 28, 2007 10:30 AM
To: Elwood, Courtney
Subject: FW: NM USATTY - urgent issue
Importance: High

From: Jennings, Jeffery S.
Sent: Wednesday, February 28, 2007 10:17 AM
To: 'KR@georgewbush.com'; Fielding, Fred F.; Sullivan, Kevin F.; Perino, Dana M.;
'kyle.sampson@usdoj.gov'
Cc: 'Sara Taylor'
Subject: NM USATTY - urgent issue
Importance: High

I just received a telephone call from Steve Bell, Sen. Domenici's CoS, who urgently reported the following:

1. Outgoing USATTY David Iglesias is holding a press conference at 11:30 Eastern this morning.
2. He is allegedly going to say that he was contacted by two Members of Congress last Fall regarding the investigation into the courthouse construction corruption case. Information on this is in the following article:
<http://www.abqtrib.com/news/2006/dec/19/federal-attorney-plans-step-down-iglesias-investig/>
3. He is allegedly going to say that the Members urged him to deliver indictments before November's election. He will further say that one of the Members, frustrated with his answer, hung up on him in anger.
4. He is allegedly going to link these phone calls with the current news - saying that he believes this ultimately led to his being asked to resign by DOJ.

Bell said Domenici's idea is not to respond, and hopefully make this a one day story. They have already been contacted by McClatchey. Unfortunately, I do not think that they can make an allegation such as this go away so easily. They have not confirmed to the reporter they were one of the Members.

I am available to discuss further - clearly, once this happens in Albuquerque the reporters will be asking DoJ and the White House

J. Scott Jennings

Special Assistant to the President and

Deputy Director, Office of Political Affairs

(202) 456-5275

Goodling, Monica

From: Goodling, Monica
Sent: Wednesday, February 28, 2007 11:24 AM
To: Roehrkasse, Brian
Subject: Re: NM USATTY - urgent issue

Dag conf rm or will's office

-----Original Message-----

From: Roehrkasse, Brian
To: Goodling, Monica
Sent: Wed Feb 28 11:23:33 2007
Subject: Re: NM USATTY - urgent issue

Where is the prep?

-----Original Message-----

From: Goodling, Monica
To: Roehrkasse, Brian
Sent: Wed Feb 28 11:20:59 2007
Subject: Re: NM USATTY - urgent issue

With dag and going into prep for will's briefing on house side. Can you come up for prep and to discuss this?

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(fax) 202.305.9687

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To: 'KR@georgewbush.com'; Fielding, Fred F.; Sullivan, Kevin F.; Perino, Dana M.;
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Bell said Domenici's idea is not to respond, and hopefully make this a one day story. They have already been contacted by McClatchey. Unfortunately, I do not think that they can make an allegation such as this go away so easily. They have not confirmed to the reporter they were one of the Members.

I am available to discuss further - clearly, once this happens in Albuquerque the reporters will be asking DoJ and the White House

J. Scott Jennings

Special Assistant to the President and

Deputy Director, Office of Political Affairs

(202) 456-5275

Goodling, Monica

From: Roehrkasse, Brian
Sent: Wednesday, February 28, 2007 12:37 PM
To: Elwood, Courtney; Goodling, Monica; Sampson, Kyle; Moschella, William; Hertling, Richard
Subject: DRAFT Talking Points

Here are my draft talking points. Please respond with comments ASAP. Thanks.

DRAFT Talking Points

- United States Attorneys never are removed in an effort to retaliate against them or interfere with or inappropriately influence a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.
- David Iglesias served since 2001 as U.S. Attorney in New Mexico and had a lengthy record from which to evaluate his performance. Our decision was based on performance-related concerns including issues associated with the overall management of the office among others during his 5 ½ years as U.S. Attorney in New Mexico.
- U.S. Attorneys [as directed by the U.S. Attorney Manual] are aware that all Congressional calls are to be directed to the Department of Justice's Office of Legislative Affairs and no one in the Department was aware of the specific details of the conversations between former U.S. Attorney Iglesias and members of the New Mexico Congressional delegation.

If asked ONLY whether the main Justice Department or the White House was contacted about the performance of former U.S. Attorney David Iglesias:

- The Department is occasionally contacted about the performance of U.S. Attorneys by home-state Senators and gives those comments the appropriate consideration. However, we will not discuss specific conversations between members and the Department on these occasions.

Brian Roehrkasse
Deputy Director of Public Affairs
U.S. Department of Justice
(202) 514-2007

OIP

From: Roehrkasse, Brian
Sent: Wednesday, February 28, 2007 1:26 PM
To: Goodling, Monica; Moschella, William; Hertling, Richard
Cc: Elwood, Courtney; Sampson, Kyle; Scolinos, Tasia
Subject: Updated Draft Talking Points and McClatchy story
Importance: High

I just spoke to Kyle on the plane and have incorporated his input as well as edits from Courtney and Tasia. The McClatchy story is below -- I think it comes from an interview rather than a press conference.

Please send me your final comments now so I can begin to use these talking points. Thanks.

DRAFT Talking Points

The suggestion that David Iglesias was asked to resign because he failed to bring an indictment over a courthouse construction contract is flatly false.

This Administration has never removed a United States Attorney in an effort to retaliate against them or interfere with or inappropriately influence a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.

David Iglesias served since 2001 as U.S. Attorney in New Mexico and had a lengthy record from which to evaluate his performance. Our decision was based on performance-related concerns including issues associated with the overall management of the office among others during his 5 ½ years as U.S. Attorney in New Mexico.

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From: Taylor, Marisa [mailto:mtaylor@mcclatchydc.com]
Sent: Wednesday, February 28, 2007 1:10 PM
To: Roehrkasse, Brian; Schwartz, Arthur
Subject: this is what I called about

I can still add a response from the department and update the story.

5/18/2007

OAG000001627

Marisa Taylor
National Correspondent
McClatchy Newspapers
(202)-383-6164

mtaylor@mcclatchydc.com

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Posted on Wed, Feb. 28, 2007

Political interference alleged in sacking of a U.S. attorney

By Marisa Taylor
McClatchy Newspapers

WASHINGTON - The U.S. attorney from New Mexico who was recently fired by the Bush administration said Wednesday that he believes he was forced out because he refused to rush an indictment in an ongoing probe of local Democrats a month before November's Congressional elections.

David Iglesias said two members of Congress separately called in mid October to inquire about the timing of an ongoing probe of a kickback scheme and appeared eager for an indictment to be issued on the eve of the elections in order to benefit the Republicans. He refused to name the members of Congress because he said he feared retaliation.

Two months later, on Dec. 7, Iglesias became one of six U.S. attorneys ordered to step down for what administration officials have termed "performance-related issues." Two other U.S. attorneys also have been asked to resign.

Iglesias, who received a positive performance review before he was fired, said he suspected he was forced out because of his refusal to be pressured to hand down an indictment in the ongoing probe.

"I believe that because I didn't play ball, so to speak, I was asked to resign," said Iglesias, who officially stepped down Wednesday.

Iglesias acknowledged that he had no proof that the pressure from the Congress members prompted his forced resignation. But he said the contact in of itself violated one of the most important tenants of a U.S. attorney's office: Don't mix politics with prosecutions.

U.S. attorneys are appointed by the president in a political process that includes Senate confirmation. But as soon as they assume office they are expected to refrain from being politically active and to resist the urge to allow their political leanings to affect the outcome of a case.

Democrats have described the mid-term firings of the Republican-appointed U.S. attorneys as unprecedented and questioned whether the firings were politically motivated to root out moderates and install candidates loyal to the administration.

Justice department officials have defended the firings as legitimate administrative decisions meant to improve the workings of the Justice Department. Deputy Attorney General Paul McNulty told the Senate that most of the forced resignations were motivated by "performance-related" reasons.

Iglesias' allegation raises new questions about the nature of the firings and seems to undermine the theory that the administration only singled out moderate Republicans. Iglesias, a former military lawyer whose work helped inspired the Tom Cruise character in a "Few Good Men," describes himself as a social conservative who strove to loyally implement the administration's policies. Iglesias also was the first Hispanic to serve as U.S. attorney in his state in decades.

"I represent three huge voting blocks of the Republican party," he said. "I don't know why they would let someone go with those political credentials who has demonstratively done a good job."

Iglesias said the two members of Congress not only contacted him directly but also proceeded to try to wrest details about the case from him. Iglesias would not comment on the case to McClatchy, but the local media has reported on aspects of the ongoing investigation, including allegations that a former Democratic state senator took money to ensure an \$82 million courthouse contract would go to specific company.

Congressional questions about ongoing cases are supposed to go through a special office within the Justice Department to avoid the appearance of impropriety. Corruption cases in particular are treated as especially sensitive.

"I was appalled by the inappropriateness of those contacts," Iglesias said of the calls.

Iglesias said they called during the lead up to the Congressional elections that gave the Democrats control of the House and Senate. The Republican Party loss was blamed in part on several ongoing criminal corruption cases against Republican members of Congress.

Jude McCartin, a spokeswoman for New Mexico's Democratic Senator Jeff Bingaman, said she had not heard of the allegations and could not comment on them.

"It wasn't us - that's all I can say," she said.

Bingaman worked with Iglesias on crafting certain legislation, but McCartin said Bingaman would never attempt to push an ongoing case for political purposes.

"U.S. attorneys have a job to do and he does not want to interfere," she said. "He's a senator and his job is to craft legislation, not involve himself in ongoing cases."

Other members of the New Mexico delegation could not be immediately reached for comment.

Senator Pete Domenici was not facing re-election, but the state's two other Republicans, U.S. Representatives Heather Wilson and Steve Pearce were up for election. Both won, but Wilson beat her opponent by 875 votes out of nearly 211,000.

Local media reports had speculated that Iglesias' office might issue an indictment before the elections.

But Iglesias said he refused to tell the members of Congress when it would be issued, although he had decided the investigation needed more time.

"You never rush any case to trial, especially political corruption cases," he said. "There is always the charge that the real basis of the prosecutions is politics and you want to avoid that."

He said he now regrets that he did not report the calls to the Justice Department as required by policy.

"I thought it would blow over," he said. "But I was wrong."

In the last several weeks, other U.S. attorneys have spoken out against the administration to dispute that they were fired because of the way they handled their job.

The administration has only acknowledged that politics played a part in the firing of former U.S. Attorney Bud Cummins in Little Rock Arkansas. In his case, officials have said he was removed to make way for Tim Griffin, a former aide to Rove. Griffin has since said he will not seek Senate confirmation because of the controversy.

The firings have put Justice Department officials in the unusual position of having to defend the ouster of Republican-appointees against Democratic criticism.

Similar to six other U.S. attorneys, Iglesias said when he was called and fired December 7, he was not given any reason other than that said the order "came from on high."

Iglesias and several other U.S. attorneys have been contacted by the House's Subcommittee on Commercial and Administrative Law about possibly testifying before Congress on the firings. Iglesias said would only testify if he were subpoenaed.

U.S. Attorney Daniel Bogden, who also stepped down Wednesday after being asked to leave in December, said he had no idea why he was asked to resign.

Like Iglesias, he received a positive performance evaluation. But unlike him, he said he never clashed with elected officials about an ongoing investigation. Bogden, a prosecutor with more than 16 years of experience, prosecuted county officials in a case connected to a San Diego indictment of several local elected officials. Carol Lam, the U.S. attorney in San Diego, was also asked to step down in December.

"As an office we thought we were functioning at a very high level," Bogden said. "You would think that if you're doing the job you should be doing you should remain in your place."

Goodling, Monica

From: Roehrkasse, Brian
Sent: Wednesday, February 28, 2007 1:26 PM
To: Goodling, Monica; Moschella, William; Hertling, Richard
Cc: Elwood, Courtney; Sampson, Kyle; Scolinos, Tasia
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Importance: High

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The Department is occasionally contacted about the performance of U.S. Attorneys by home-state Senators and gives those comments the appropriate consideration. [IF PUSHED] We will not discuss specific conversations between members and the Department on these occasions.

From: Taylor, Marisa [mailto:mtaylor@mcclatchydc.com]
Sent: Wednesday, February 28, 2007 1:10 PM
To: Roehrkasse, Brian; Schwartz, Arthur
Subject: this is what I called about

I can still add a response from the department and update the story.

Marisa Taylor
National Correspondent
McClatchy Newspapers
(202)-383-6164

mtaylor@mcclatchydc.com

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Posted on Wed, Feb. 28, 2007 <http://www.realcities.com/images/common/spacer.gif>
<http://www.realcities.com/images/common/spacer.gif>

Political interference alleged in sacking of a U.S. attorney

By Marisa Taylor
McClatchy Newspapers

WASHINGTON - The U.S. attorney from New Mexico who was recently fired by the Bush administration said Wednesday that he believes he was forced out because he refused to rush an indictment in an ongoing probe of local Democrats a month before November's Congressional elections.

David Iglesias said two members of Congress separately called in mid October to inquire about the timing of an ongoing probe of a kickback scheme and appeared eager for an indictment to be issued on the eve of the elections in order to benefit the Republicans. He refused to name the members of Congress because he said he feared retaliation.

Two months later, on Dec. 7, Iglesias became one of six U.S. attorneys ordered to step down for what administration officials have termed "performance-related issues." Two other U.S. attorneys also have been asked to resign.

Iglesias, who received a positive performance review before he was fired, said he suspected he was forced out because of his refusal to be pressured to hand down an indictment in the ongoing probe.

"I believe that because I didn't play ball, so to speak, I was asked to resign," said Iglesias, who officially stepped down Wednesday.

Iglesias acknowledged that he had no proof that the pressure from the Congress members prompted his forced resignation. But he said the contact in of itself violated one of the most important tenants of a U.S. attorney's office: Don't mix politics with prosecutions.

U.S. attorneys are appointed by the president in a political process that includes Senate confirmation. But as soon as they assume office they are expected to refrain from being politically active and to resist the urge to allow their political leanings to affect the outcome of a case.

Democrats have described the mid-term firings of the Republican-appointed U.S. attorneys as unprecedented and questioned whether the firings were politically motivated to root out moderates and install candidates loyal to the administration.

Justice department officials have defended the firings as legitimate administrative decisions meant to improve the workings of the Justice Department. Deputy Attorney General Paul McNulty told the Senate that most of the forced resignations were motivated by "performance-related" reasons.

Iglesias' allegation raises new questions about the nature of the firings and seems to undermine the theory that the administration only singled out moderate Republicans. Iglesias, a former military lawyer whose work helped inspired the Tom Cruise character in a "Few Good Men," describes himself as a social conservative who strove to loyally implement the administration's policies. Iglesias also was the first Hispanic to serve as U.S. attorney in his state in decades.

"I represent three huge voting blocks of the Republican party," he said. "I don't know why they would let someone go with those political credentials who has demonstratively done a good job."

Iglesias said the two members of Congress not only contacted him directly but also proceeded to try to wrest details about the case from him. Iglesias would not comment on the case to McClatchy, but the local media has reported on aspects of the ongoing investigation, including allegations that a former Democratic state senator took money to ensure an \$82 million courthouse contract would go to specific company.

Congressional questions about ongoing cases are supposed to go through a special office within the Justice Department to avoid the appearance of impropriety. Corruption cases in particular are treated as especially sensitive.

"I was appalled by the inappropriateness of those contacts," Iglesias said of the calls.

Iglesias said they called during the lead up to the Congressional elections that gave the Democrats control of the House and Senate. The Republican Party loss was blamed in part on several ongoing criminal corruption cases against Republican members of Congress.

Jude McCartin, a spokeswoman for New Mexico's Democratic Senator Jeff Bingaman, said she had not heard of the allegations and could not comment on them.

"It wasn't us - that's all I can say," she said.

Bingaman worked with Iglesias on crafting certain legislation, but McCartin said Bingaman would never attempt to push an ongoing case for political purposes.

"U.S. attorneys have a job to do and he does not want to interfere," she said. "He's a senator and his job is to craft legislation, not involve himself in ongoing cases."

Other members of the New Mexico delegation could not be immediately reached for comment.

Senator Pete Domenici was not facing re-election, but the state's two other Republicans, U.S. Representatives Heather Wilson and Steve Pearce were up for election. Both won, but Wilson beat her opponent by 875 votes out of nearly 211,000.

Local media reports had speculated that Iglesias' office might issue an indictment before the elections.

But Iglesias said he refused to tell the members of Congress when it would be issued, although he had decided the investigation needed more time.

"You never rush any case to trial, especially political corruption cases," he said. "There is always the charge that the real basis of the prosecutions is politics and you want to avoid that."

He said he now regrets that he did not report the calls to the Justice Department as required by policy.

"I thought it would blow over," he said. "But I was wrong."

In the last several weeks, other U.S. attorneys have spoken out against the administration to dispute that they were fired because of the way they handled their job.

The administration has only acknowledged that politics played a part in the firing of former U.S. Attorney Bud Cummins in Little Rock Arkansas. In his case, officials have said he was removed to make way for Tim Griffin, a former aide to Rove. Griffin has since said he will not seek Senate confirmation because of the controversy.

The firings have put Justice Department officials in the unusual position of having to defend the ouster of Republican-appointees against Democratic criticism.

Similar to six other U.S. attorneys, Iglesias said when he was called and fired December 7, he was not given any reason other than that said the order "came from on high."

Iglesias and several other U.S. attorneys have been contacted by the House's Subcommittee on Commercial and Administrative Law about possibly testifying before Congress on the firings. Iglesias said would only testify if he were subpoenaed.

U.S. Attorney Daniel Bogden, who also stepped down Wednesday after being asked to leave in December, said he had no idea why he was asked to resign.

Like Iglesias, he received a positive performance evaluation. But unlike him, he said he never clashed with elected officials about an ongoing investigation. Bogden, a prosecutor with more than 16 years of experience, prosecuted county officials in a case connected to a San Diego indictment of several local elected officials. Carol Lam, the U.S. attorney in San Diego, was also asked to step down in December.

"As an office we thought we were functioning at a very high level," Bogden said. "You would think that if you're doing the job you should be doing you should remain in your place."

Goodling, Monica

From: Goodling, Monica
Sent: Wednesday, February 28, 2007 1:42 PM
To: Roehrkasse, Brian
Subject: RE: Updated Draft Talking Points and McClatchy story

Tracking: Recipient Read
 Roehrkasse, Brian Read: 2/28/2007 1:53 PM

How about:

David Iglesias was confirmed in 2001 to a four-year term as U.S. Attorney in New Mexico and was allowed to extend his service for an additional year and a half. During his 5 ½ years of service, we had a lengthy record from which to evaluate his performance as a manager and we made our decision not to further extend his service based on performance-related concerns.

From: Roehrkasse, Brian
Sent: Wednesday, February 28, 2007 1:26 PM
To: Goodling, Monica; Moschella, William; Hertling, Richard
Cc: Elwood, Courtney; Sampson, Kyle; Scolinos, Tasia
Subject: Updated Draft Talking Points and McClatchy story
Importance: High

I just spoke to Kyle on the plane and have incorporated his input as well as edits from Courtney and Tasia. The McClatchy story is below – I think it comes from an interview rather than a press conference.

Please send me your final comments now so I can begin to use these talking points. Thanks.

DRAFT Talking Points

The suggestion that David Iglesias was asked to resign because he failed to bring an indictment over a courthouse construction contract is flatly false.

This Administration has never removed a United States Attorney in an effort to retaliate against them or interfere with or inappropriately influence a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.

David Iglesias served since 2001 as U.S. Attorney in New Mexico and had a lengthy record from which to evaluate his performance. Our decision was based on performance-related concerns including issues associated with the overall management of the office among others during his 5 ½ years as U.S. Attorney in New Mexico.

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OAG000001635

3/12/2007

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Posted on Wed, Feb. 28, 2007

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Iglesias, who received a positive performance review before he was fired, said he suspected he was forced out because of his refusal to be pressured to hand down an indictment in the ongoing probe.

"I believe that because I didn't play ball, so to speak, I was asked to resign," said Iglesias, who

OAG000001636

officially stepped down Wednesday.

Iglesias acknowledged that he had no proof that the pressure from the Congress members prompted his forced resignation. But he said the contact in of itself violated one of the most important tenants of a U.S. attorney's office: Don't mix politics with prosecutions.

U.S. attorneys are appointed by the president in a political process that includes Senate confirmation. But as soon as they assume office they are expected to refrain from being politically active and to resist the urge to allow their political leanings to affect the outcome of a case.

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Goodling, Monica

From: Roehrkasse, Brian
Sent: Wednesday, February 28, 2007 2:22 PM
To: Scolinos, Tasia; Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; McNulty, Paul J; Elwood, Courtney; Nowacki, John (USAEO); Hertling, Richard
Subject: Final Talking Points

Attached are the final talking points on the allegations by U.S. Attorney David Iglesias.

Talking Points

- The suggestion that David Iglesias was asked to resign because he failed to bring an indictment over a courthouse construction contract is flatly false.
- This Administration has never removed a United States Attorney in an effort to retaliate against them or inappropriately interfere with a public integrity investigation. Furthermore, in the last six years, the Department has demonstrated its extremely strong record rooting out public corruption including prosecuting a number of very high profile cases.
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Brian Roehrkasse
Deputy Director of Public Affairs
U.S. Department of Justice
(202) 514-2007

Goodling, Monica

From: Goodling, Monica
Sent: Monday, March 05, 2007 11:17 AM
To: Moschella, William; Hertling, Richard; Scott-Finan, Nancy
Cc: Sampson, Kyle
Subject: McKay judicial interview

Here's the WHCO answer:

It's true that McKay was not recommended by the Republican-led commission in Washington state as a candidate for a district court position; however, he could claim he was interviewed by the White House for the position anyway. This is not really information that WHCO would want used publicly, but the interview came about because McKay knew Harriet Miers somehow and called her to say that he was in town and wanted to come by to say hello. She agreed. Once he was in the White House, McKay then said he was interested in the judgeship and basically asked to be interviewed. My understanding is that Harriet did conduct an abbreviated interview -- but only as a courtesy. That's also why he got a dissappointee call, despite the fact that he was never in the process to begin with (but he thought he was).

WHCO would generally prefer this line of question be avoided since the Members shouldn't have knowledge of the commission's recommendations or the fact that the interview was only a courtesy (which, of course, McKay also does not know).

Tracking:	Recipient	Read
	Moschella, William	Read: 3/5/2007 1:08 PM
	Hertling, Richard	
	Scott-Finan, Nancy	Read: 3/5/2007 12:16 PM
	Sampson, Kyle	Deleted: 3/5/2007 8:46 PM

CURRENT & UPCOMING VACANCIES

Current vacancies (20):

- **Maine** (since 2001) – still continuing to request names from senators
- **Southern District of West Virginia** (since 2005) - waiting on names from congresswoman
- **Eastern District of Tennessee** (since 2005) – candidate in background review
- **Alaska** (since 1/06) – waiting on names from senators
- **Southern District of Illinois** (since 2005 or 3/06, depending) - nomination sent to last Congress but not approved; on hold
- **Western District of Missouri** (since 3/06) - nomination pending
- **Puerto Rico** (since 6/06) - nomination pending
- **District of Columbia** (since 9/06) - nomination pending
- **Nebraska** (since 10/06) - candidate in background review
- **Middle District of Tennessee** (since 10/06) - waiting on additional names from senators
- **Central District of California** (since 11/06) – working with home-state commission
- **Eastern District of Arkansas** (since 12/06) – waiting on names from congressman
- **Northern District of Iowa** (since 12/06) - candidate in background
- **District of Arizona** (since 1/07) – would like to request more names from senators
- **Western District of Washington** (since 1/07) – waiting on additional names from committee
- **Southern District of Georgia** (since 2/7/07) – waiting on additional names from senators
- **Southern District of California**, Carol Lam, 2/15/07 – waiting on names from commission
- **Northern District of California** Kevin Ryan, 2/16/07 – waiting on names from commission
- **Nevada**, Dan Bogden, 2/28/07 – waiting on names from senator
- **New Mexico**, David Iglesias, 2/28/07 – candidate selected but waiting on home-state senator sign-off

Publicly-announced or known upcoming resignations (4):

- **Western District of Michigan**, Margaret Chiara, 3/07
- **Montana**, Bill Mercer, pending confirmation of new position
- **Northern District of Indiana**, Joe Van Bokkelen, pending confirmation of new position
- **Eastern District of New York**, Roslynn Mauskopf, pending confirmation of new position

Question: Is there any way to determine how many judges appointed interim U.S. Attorneys in the past 6 years? How many would not do it?

Answer:

- EOUSA's records show that there have been 66 occasions in this Administration where a person appointed by this Administration's Attorneys General to serve as interim U.S. Attorney was then re-appointed to continue to serve by the federal district court after the 120-day AG appointment ended. There are an additional 8 occasions where a person appointed by the last Administration's Attorney General to serve as interim U.S. Attorney was then re-appointed to continue to serve by the federal district court after the 120-day AG appointment ended. (Those districts are listed below.)
- In this Administration, there are 5 known occasions where there were issues with the court regarding appointments. The court may have refused to make any appointment; declined to use their authority, enabling the AG to re-appoint the individual to consecutive 120-day terms; or, where there is some recollection within the Department that there was disagreement over the individual to be appointed. (Those districts are listed below.)

Districts where an Attorney General appointed someone as interim U.S. Attorney and then 120 days later the court re-appointed the same individual to continue under the court's authority:

- Alábama, Southern (Ginny Granada)
- Alabama, Southern (Deborah Rhodes)
- Alaska (Tim Burgess)
- Arizona (Paul Charlton)
- Arkansas, Eastern (Michael Johnson; note - AG appointment at end of Clinton Administration, but Court appointment in May 2001)
- Arkansas, Western (Bill Cromwell; note - AG appointment at end of Clinton Administration, but Court appointment in May 2001)
- California, Central (John Gordon)
- California, Eastern (John Vincent; note - AG appointment at end of Clinton Administration, but Court appointment in May 2001)
- California, Northern (David Shapiro)
- California, Southern (Patrick O'Toole)
- Colorado (Richard Spriggs)
- Colorado (Bill Leone)
- Connecticut (John Danaher)
- Delaware (Richard Andrews)

- Washington, D.C. (Ken Wainstein; note received AG and court appointments in 2001, and then again in 2004 after the resignation of Senate-confirmed USA Roscoe Howard)
- Florida, Middle (Mac Cauley)
- Florida, Northern (Tom Kirwin)
- Georgia, Southern (Eddie Booth)
- Georgia, Southern (Paul Murphy)
- Georgia, Southern (Lisa Wood)
- Hawaii (Elliot Enoki)
- Iowa, Southern (Inga Bumbarly-Langston)
- Iowa, Southern (Steve O'Meara)
- Louisiana, Eastern (Jim Letten)
- Maine (Paula Silsby)
- Maryland (Stephen Schenning)
- Maryland (Allen Loucks)
- Michigan, Eastern (Alan Gershel)
- Michigan, Eastern (Craig Morford)
- Michigan, Western (Phillip Green)
- Minnesota (Robert Small; note - AG appointment at end of Clinton Administration, but Court appointment in May 2001)
- Mississippi, Northern (Jim Greenlee)
- Mississippi, Southern (James Tucker; note - AG appointment at end of Clinton Administration, but Court appointment in May 2001)
- Missouri, Eastern (Ray Gruender)
- Missouri, Eastern (Jim Martin)
- Missouri, Eastern (Catherine Hanaway)
- Missouri, Western (Marietta Parker)
- Montana (Bill Mercer)
- Nebraska (Mike Heavican)
- New Hampshire (Gretchen Witt)
- New York, Eastern (Alan Vinegrad)
- New York, Northern (Joseph Pavone)
- New York, Southern (David Kelley)
- New York, Western (Kathleen Mehlretter)
- North Carolina, Middle (Benjamin White)
- North Carolina, Western (Bob Conrad)
- North Carolina, Western (Gretchen Shappert)
- North Dakota (Lynn Crooks; note - AG appointment at end of Clinton Administration, but Court appointment in April 2001)
- Oklahoma, Northern (Thomas Scott Woodward; note - AG appointment at end of Clinton Administration, but Court appointment in April 2001)
- Oklahoma, Western (John Richter)
- Oregon (Mike Mosman)
- Pennsylvania, Eastern (Mike Levy)

- Pennsylvania, Middle (Martin Carlson)
- Pennsylvania, Western (Linda Kelly)
- Puerto Rico (Bert Garcia)
- Rhode Island (Craig Moore)
- South Carolina (Scott Schools)
- South Carolina (Johnny Gasser)
- Tennessee, Eastern (Russ Dedrick)
- Texas, Northern (Richard Stephens)
- Texas, Northern (Richard Roper)
- Texas, Southern (Greg Serres)
- Texas, Western (Bob Pitman)
- Vermont (David Kirby; note received AG appointment at end of Clinton Administration, but Court appointment in May 2001; also received both appointments in 2005 after the resignation of Senate-confirmed USA Peter Hall)
- Virgin Islands (David Atkinson)
- Virginia, Eastern (Ken Melson)
- West Virginia, Northern (Patrick Flatley)
- West Virginia, Southern (Chuck Miller)
- Wisconsin, Eastern (Jim Sentelle)
- Wisconsin, Western (Grant Johnson)
- Wisconsin, Western (Steve Sinnott)
- Wyoming (John Green)

Districts where there were issues with the court regarding appointments in this Administration:

- Florida, Southern (the court did not exercise their authority; Alex Acosta received three consecutive 120-day AG appointments)
- Illinois, Southern (there was some disagreement between the court and the Department over the appointee)
- North Carolina, Eastern (court did not exercise authority in 2001; John Bruce received three consecutive 120-day AG appointments before the court did then make an appointment in 2002 of Frank Whitney, the nominee)
- Oklahoma, Eastern (court did not exercise authority; Shelly Sperling received four consecutive 120-day AG appointments)
- South Dakota (disagreement over appointee spawned a significant constitutional clash; see attached document for additional details)

* NOTE - There may have been other districts where there was initially disagreement between the Department and the court over the individual to be selected, but it was resolved through discussion and was not recorded.